

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

KENNETH CARL CRISSUP,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. C-05-431
	§	
BRAD LIVINGSTON,	§	
	§	
Respondent.	§	

ORDER

Petitioner is an inmate in the Texas Department of Criminal Justice - Correctional Institution Division, and is currently incarcerated at the Mark Stiles Unit in Beaumont, Texas. Proceeding *pro se*, petitioner filed a petition pursuant to 28 U.S.C. § 2254, challenging his Nueces County conviction and 20-year sentence. Pending are petitioner's motions for appointment of counsel (D.E. 3, 9-1, 11-1) and his motions for discovery (D.E. 9-2, 10).

There is no constitutional right to counsel in federal habeas proceedings. *Johnson v. Hargett*, 978 F.2d 855 (5th Cir. 1992). Rule 8 of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues which mandate an evidentiary hearing. Moreover, counsel may be assigned if discovery is ordered and issues necessitating the assignment of counsel are evident. Rule 6(a) of the Rules Governing § 2254 Cases; *Thomas v. Scott*, 47 F.3d 713, 715 n. 1 (5th Cir. 1995).

Petitioner's request for counsel is premature. The case is newly filed and an order for respondent to file a response has just been issued. No evidentiary hearing has been set. If after a response is filed, an evidentiary hearing is required, or the case appears to be of sufficient complexity to mandate appointment of counsel, counsel will be appointed. Petitioner's motions for discovery is also premature because no answer has been filed.

Accordingly, petitioner's motion for appointment of counsel and for discovery (D.E. 3, 9-1, 9-2, 10, 11-1) are denied without prejudice. Counsel will be assigned *sua sponte* if there are issues which mandate an evidentiary hearing or if the need for discovery becomes evident.

ORDERED this 26th day of August, 2005.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE